

DRAFT
Council on Worker's Compensation
Meeting Minutes – Hybrid Meeting (In-person and WebEx)
201 E. Washington Avenue
GEF-1 Building
Madison, Wisconsin
April 29, 2025

The Department of Workforce Development (DWD) provided public notice of the meeting under Wis. Stat. § 19.84.

Members present in-person and via video: Ms. Bloomingdale, Mr. Buchen, Ms. Frank, Mr. Fugina, Mr. Kent, Ms. Kosnicki, Mr. Large, Ms. Meidl, Mr. Nettum, Mr. Dipko (Chairperson), Mr. Reese, Mr. Schwanda, Mr. Tindell, and Ms. Ver Velde.

Ex Officio Member: Senator Dan Feyen

Excused: Mr. Nettum

Staff Present: Mr. Aiello, Mr. Brockman, Ms. Driese, Mr. Gennrich, Ms. Halsey, Ms. Lake, Ms. Przybylo, Mr. Przybylo, Mr. Sensenbrenner, and Mr. Spencer.

1. **Call to Order/Introductions:** Mr. Dipko convened the Worker's Compensation Advisory Council (WCAC) meeting at approximately 11:17 a.m. in accordance with Wisconsin's open meetings law and called roll of the WCAC members.
2. **Approval of the Minutes:** A motion was made by Ms. Ver Velde to approve the minutes of the March 11, 2025 teleconference meeting. Ms. Bloomingdale seconded the motion. The minutes of the March 11th meeting were unanimously approved without correction. A motion was made by Mr. Tindall to approve the minutes of the March 19, 2025 meeting. Ms. Bloomingdale seconded the motion. The minutes of the March 19th meeting were unanimously approved without correction.
3. **Worker's Compensation Ratemaking Process:** Mr. Bernard Rosauer, President of the Wisconsin Compensation Rating Bureau (WCRB), gave a brief presentation to clarify the difference between worker's compensation premiums paid by employers and the rate setting process. Premiums are the sums of most interest to employers as this is the money paid for worker's compensation insurance. Rates apply to different classifications of employees based on the dangers associated with the employment. Rates are set at a sum certain based on every \$100 of payroll.

There are several factors that bear on rate setting. Generally, the more dangerous the employment, the higher the rate. Setting an accurate WC rate for each classification of employee is the WCRB's focus. There has been a decrease in WC costs industry wide across the nation. Rates have come down by 50-60% from their historic high. However, this does not necessarily mean employers are paying less, especially if they have an increase in payroll. Mr. Rosauer indicated he may have a helpful Milliman report on file that he will produce to explain the interaction of rates, costs and premiums.

4. **Correspondence:** Mr. Dipko reviewed correspondence since the last meeting.

An e-mail message was received on April 14, 2025 from Mr. Jimmy Novy to the WCAC. Mr. Novy requested that an increase in supplemental benefits be considered by the WCAC.

Mr. John Dipko, Division Administrator of the Worker's Compensation Division, authored a letter on April 24, 2025 in response to the letter from Mr. Bernard Rosauer, President of the Worker's Compensation Rating Bureau, dated March 10, 2025. The letter clarified the position of the Worker's Compensation Division regarding the minimum permanent partial disability (PPD) ratings.

5. **Legislation Updates:** Mr. Dipko stated that on April 5, 2025, Governor Evers approved the administrative rule covered in Statement of Scope 113-23 to revise sections of Chapter DWD 80 of the Wisconsin Administrative Code to conform the administrative rules with changes previously adopted in ch. 102, Wis. Stats., and correctly cross-reference the statutes. These are minor and technical changes. The rule has been referred to committees in the Assembly and Senate for review.

2025 Assembly Bill 158 and 2025 Senate Bill 168 were recently introduced. These bills are essentially the same legislation previously sponsored by Senator Andre Jacque about extending the conditions of liability for worker's compensation benefits for PTSD claims under s. 102.17 (9), Wis. Stats., to include emergency medical responders, emergency medical services practitioners, volunteer firefighters, correctional officers, emergency dispatchers, coroners, coroner staff, medical examiners, and medical examiner staff.

6. **Motion to Caucus:** Ms. Bloomingdale moved the members to go into a closed session under s. 19.85 (1) (eg), Wis. Stats., to deliberate items on the agenda and reconvene later that afternoon. Ms. Ver Velde seconded the motion. By unanimous vote, the motion passed. Mr. Dipko announced the closed session, statutory authority, and the nature of business to be considered. The open session of the meeting was adjourned at approximately 11:45 a.m. The members returned from caucus at about 3:20 p.m.

7. **Labor and Management Proposals:** Ms. Ver Velde stated upon conferring with Ms. Bloomingdale it should be noted that the Labor and Management members of the WCAC strongly support the inclusion of the same language the Council agreed to in the last biennial Agreed Upon Bill for the expansion of certain employees allowed to make PTSD claims under s. 102.17 (9), Wis. Stats., in the 2025-2027 Agreed Upon Bill.

Ms. Bloomingdale indicated that the Labor members are looking forward to working with Management members on the Agreed Upon Bill. She acknowledged the importance of the WCAC process to all of those involved in labor and management in Wisconsin. While the process can be laborious and frustrating at times, it is necessary and good. We celebrated Worker's Memorial Day on April 28, 2025 to honor those who have died in work related accidents. Any one injury or death is one too many. Through negotiations we will be able to come together to provide stakeholders with a reliable system.

Ms. Bloomingdale presented the Labor proposals to be considered in the next Agreed Upon Bill for 2025-2027, which are as follows:

1. **Permanent Total Disability Supplemental Benefits and Indexing:** Advance the eligible dates and benefit rates to 6 years prior to date of enactment of the WC Agreed Upon Bill. Rolling indexing with 6-year lag for all dates of injury resulting in permanent total disability to the rate in effect at the time the benefit accrues. Allow supplemental benefits to injured workers who are receiving compensation for permanent total disability from the Second Injury Fund.

2. **Permanent Partial Disability (PPD) Indexing:** Increase the maximum PPD rate annually to 22.5% of the maximum average weekly wage in effect for the date of injury.

3. **Death Benefits:** Revise the death benefit statutes to eliminate the concept of dependency. Death benefits shall be payable to surviving spouses, children, siblings, parents, and other next-of-kin in a manner similar to probate/estate law. Employers/insurers may pay the death benefit to an escrow account administered by the Department. The Department shall establish procedures for investigating and determining proper disbursement. A claimant recognized by probate/estate law may file a hearing application disputing the Department's determination. Funding for the Department's responsibilities and representation shall come from Work Injury Supplemental Benefit Fund.

4. **Scholarships:** Provide for a statutory scholarship benefit for injured worker's children, where a parent's injury causes death. Scholarship amount for each child would be for the tuition, room and board, and book expense for up to four years at a Wisconsin State University System school, Wisconsin State Technical College System, or certified apprenticeship program, at the child's choice.

5. **Statute of Limitations Extended by Payment of Medical Expense:** Current law s. 102.17 (4), Wis. Stats., provides for a statute of limitations of 6 years for traumatic injuries, measured from the date of injury or the last payment of compensation, whichever is later. Payment of medical expense currently does not extend the statute of limitations. This proposal would add the date of the last payment of medical expense as an additional measurement point for the start of the statute of limitations.

6. **Shoulder Replacement, Spinal Fusions:** Amend s. 102.17 (4), Wis. Stats., to include shoulder replacement, reverse shoulder replacement, as well as spinal fusions as an additional serious traumatic injury with no statute of limitations.

7. **Eliminate Restricted Accounts for Compromise Agreements:** Requirement for a restricted bank account for any of the applicant's compromise amounts will be prohibited.

8. **Injured Worker Choice of Third-Party Settlements:** Amend s. 102.29, Wis. Stats., to change the law from the employer having an equal voice about whether a settlement offer should be accepted to the worker having the right to control the settlement or no settlement decision.

9. **Reinstatement of Employment and Damages in s. 102.35 (3), Wis. Stats., Claim:** The Department or Division may order reinstatement of employment upon a finding of unreasonable refusal to rehire if the employee desires reinstatement, along with wage loss after end of healing but before reinstatement. In all other cases, upon a finding of

unreasonable refusal to rehire, monetary damages shall be 1 years' wages regardless of the employee's earnings after end of healing.

10. Continuation of Health Care Coverage: If during the period of temporary disability an employer fails to continue to provide ongoing group health care coverage for an injured worker or his/her family, if such coverage was provided as of the time of injury, the temporary total disability rate shall be expanded in an amount equal to 100% of the employer contribution for such group health care that the worker (and his/her family, if applicable) had as of the date of injury. In such a circumstance, the maximum temporary total disability (TTD) rate does not apply to cap TTD benefits.

11. Loss of Earning Capacity for Scheduled Injuries: If a worker suffers a scheduled injury, and if retraining has been attempted but fails to fully restore the injured worker's pre-injury earning capacity, or if retraining is not feasible for the injured worker, allow a claim for loss of earning capacity in the same manner as currently allowed for unscheduled injuries.

12. Limit Number of Medical Record Review Reports: Under current law, an employer or worker's compensation carrier may commission an unlimited number of medical record reviews by medical providers, and those reports are not required to be disclosed to claimants. Amend s. 102.13, Wis. Stats., to provide that an employer or carrier may only obtain a medical record review with either the provider who has or will later conduct an IME pursuant to s.102.13 (1) (a), Wis. Stats., or with one provider other than a provider who performs an IME pursuant to Wis. Stat. s. 102.13 (1) (a), Wis. Stats.; that such reports must be disclosed to claimants within a reasonable time of receipt by the employer or carrier; and that record reviews are limited in any event to one every six (6) months.

13. Advanced Practice Registered Nurses (APRN) and Physician Assistants (PA): Authorize APRNs and PAs to provide opinions on cause and extent of disability on WKC-16-B forms.

14. Doctors of Audiology (Au.D.): Authorize Doctors of Audiology to provide opinions on cause and extent of disability on WKC-16-B forms in hearing loss cases.

Ms. Ver Velde reiterated her caucus's full support for and intent to maintain the WCAC process.

Ms. Ver Velde presented Management's first proposal and emphasized that a medical fee schedule is the number one priority due to Wisconsin's higher than average medical costs.

1. Medical Fee Schedule. Wisconsin is an extreme outlier because there is no medical fee schedule in place to control costs for workers compensation medical claims. The proposal is for the Department develop a medical fee schedule for medical charges based on average group health rates to be in place by January 1, 2027. The fee schedule shall strive to keep costs below the national average according to national data from WCRI. The fee schedule may be regional to account for different costs in various regions of the state.

Mr. Tindall presented the remaining Management proposals, which are as follows:

2. Employer Directed Care. Authorize employer directed care for the first 90 days of treatment outside of emergency room care. To utilize this, employers must specify a diverse list of health care providers who are authorized to provide care for injured workers. The list shall include at least 6 health care providers, at least 3 of whom must be physicians who are geographically accessible and have specialties that are appropriate based on anticipated work-related medical problems of the employees. This list must include contact information and must be posted in a prominent location.

3. Reduce Statutory Minimums for PPD. Reduce current statutory minimum permanent partial disability ratings by fifty percent in s. DWD 80.32 of the Wisconsin Administrative Code where surgical treatments have made it such that outcomes result in no permanent disability.

4. Approval of Compromise Agreements. Clarify the 2023-24 agreed upon language with the underlined changes:

--amend 102.18 (1) (b) 1d. to: If an application has been filed under s. 102.17 (1) (a) 1. for a claim for compensation , after the division issues an order on the merits of the case of the claim under subd. 1, or an order under sub. (2) (c), if there is no pending action for review by a court, the division shall return to the department the file for the case of the claim within 30 days after issuing the order. The department shall conduct further administrative activities, including closing the case of the claim. In the case of an order issued under sub. (2) (c), the division shall dismiss the application for hearing at the time the order is issued. This subdivision applies to all division orders issued after the effective date of this subdivision, regardless of the date of injury.

-- amend 102.17 (4) (a) to: Except as provided in this subsection and s. 102.555 (12) (b), in the case of occupational disease, the right of an employee, the employee's legal representative, a dependent, the employee's employer or the employer's insurance company, or other named party to proceed under this section shall not extend beyond 12 years after the date of the injury or death or after the date that compensation, other than for treatment or burial expenses, was last paid, or would have been last payable if no advancement were made, whichever date is latest, and in the case of traumatic injury, that right shall not extend beyond 6 years after that date. The statute of limitations under this subsection begins to run on the date an order is issued by the division approving a compromise agreement. An order approving a compromise agreement after the effective date of this subsection must include a dismissal of the pending application for hearing in the compromised claim, regardless of the date of injury. A further claim is not barred except as provided in this subsection, regardless of whether an award is made.

5. Case Closure. Require that cases be closed when compromises are approved.

6. **PTD Benefit Limitation.** Terminating compensation for Permanent Total Disability (PTD) once the injured worker is eligible to receive Social Security old-age retirement benefits. Benefits should terminate upon the death of the recipient.

7. **Prohibit PPD Stacking.** LIRC and the courts have held that the minimum awards set forth in s. DWD 80.32 of the Wisconsin Administrative Code can be stacked for each surgical procedure due to the same injury. This leads to awards that are higher than the amount set by the code. Permanent disability ratings should be based on actual ratings as assessed by medical experts.

8. **Require Work Exposure to be Predominant Cause to Allow Compensability.** Workplace exposure must be the predominant cause of the condition for a non-traumatic injury to be compensable under the worker's compensation law.

9. **PTD Re-evaluation.** Authorize an employer or insurer to request an injured worker receiving PTD benefits to have their PTD ratings re-evaluated every 3 years.

10. **Death Benefits.** No death benefits should be allowed in PTD claims when the death is unrelated to the occupational injury or illness.

11. **Statute of Limitations.** Reduce the statute of limitations to 2 years, except that in the case of occupational disease caused by exposure to toxic substances there shall be no statute of limitations, and where an employee's injury, that is otherwise undisputed, requires a prosthesis or artificial joint, there shall be no statute of limitations as to the medically necessary treatment expenses directed to said prosthesis or artificial joint.

12. **Tolling the Statutes.** Past Department practice allowed tolling the statutes. This practice was ended by DOA Division of Hearings and Appeals effective March 1, 2017. We propose to amend ch.102, Wis. Stats., to state that:

- Hearing applications will only be accepted by the Department when there is a justiciable controversy.
- Repeal s. 102.17 (2), Wis. Stats., of the statutes.
- Require OWCH to dismiss a pending application for hearing when there are no, or there are no longer, disputed issues for which the parties to the claim are seeking a determination.
- Provide that the statute of limitations in a worker's compensation case is tolled when an application for hearing is pending but that the statute of limitations shall not be extended as a result of the filing of an application for hearing.
- Provide that consideration paid for a compromise agreement is not an advancement of benefits as provided by s. 102.32 (6m), Wis. Stats.
- Sections 102.17 (4) (a) and 102.18 (1) (b)1. d., Wis. Stats., apply to all dates of injury (not just to dates of injury after March 24, 2024).

13. **Eliminate Safety Offsets.** Worker's compensation was intended to be a no-fault system. Therefore, the safety offsets under ss. 102.57 and 102.58, Wis. Stats., should be eliminated.

14. **Third Party Observers.** In order to protect patient confidentiality and promote open dialog on issues eliminate the use of third-party observers in psychology IME's.

15. **Case Management Access.** In the case of inpatient hospitalization, the health care provider shall not restrict the employer or insurer case management personnel from access to records and involvement in care and discharge planning.

Mr. Dipko announced that the Department was making progress on finalizing DWD proposals and hoped to provide those to the Council soon.

8. **Other Business of the Council:** No other business was addressed.

9. **Adjournment:** A motion was made by Mr. Buchen to adjourn for the day. The motion was seconded by Ms. Bloomingdale. The motion passed unanimously and the meeting adjourned at 3:50 p.m. The Worker's Compensation Advisory Council's next meeting is scheduled for May 13, 2025.